IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 655 of 2005.

Date of decision: 28.12.2005.

Gurbaksh Singh & Ors. ... Appellants

Versus

Rajinder Kaur & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1] Yes.

For the appellants: Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate.

For the respondents: Nemo.

V.M. Jain, J. (Oral):

This Regular Second Appeal has been filed by the plaintiffs - appellants against the judgments and decrees of the Courts below, whereby the suit filed by the plaintiffs was dismissed by the trial Court and the appeal filed by them was also dismissed by the learned Additional District Judge.

The facts which are relevant for the decision of the present appeal are that the plaintiffs had filed a suit for declaration and permanent prohibitory injunction against the defendants, alleging therein that the suit land measuring 7 Kanals 2 Marlaswas purchased by the plaintiffs in March, 1965, from its previous owner Mast Ram vide agreement to sell dated 27.3.1965 and sale deed dated 18.5.1965 was

[1]Whether reporters of Local Papers may be allowed to see the judgment?

got executed by the plaintiffs in favour of Smt. Nasib Kaur who was the real sister of the plaintiff and mother of defendant No.1. It was alleged that even though the sale deed was executed in favour of Smt. Nasib Kaur qua the suit land, yet the plaintiffs remained in actual physical possession over the suit property which was purchased by them in the name of Smt. Nasib Kaur. It was alleged that in the year 1975, Smt. Nasib Kaur was allotted 18 Marlas of land by the State of Himachal Pradesh under the H.P. Village Common Lands (Vesting & Utilisation) Act and the rules framed there under and Smt. Nasib Kaur had put the plaintiffs in possession of the same by admitting the plaintiffs to be exclusive owner in possession of the same and she had been admitting the right, title and interest of the plaintiffs over the suit land. It was alleged that the plaintiffs constructed industrial shed on a part of the suit land by the name M/S Nasib Flour Mill. It was alleged that defendant No.1 in connivance with the revenue staff got the suit property sanctioned in her name and was threatening to dispossess the plaintiffs from the suit land. It was alleged that during the pendency of the suit defendant No.1 had sold land measuring 15 Marlas in favour of defendants No. 5 and 6. It was alleged that the said sale deed was illegal and void.

The defendants contested the suit by filing written statement, alleging therein that Smt. Nasib Kaur was owner in possession of the suit land and after hear death, defendant No.1 became the owner in possession of the suit land and she sold a part of it in favour of defendants No. 5 and 6 and the sale was legal and valid. It was denied that Smt. Nasib Kaur admitted the plaintiffs to be the owners of the land measuring 18 Marlas which was sanctioned by the Government in favour of Smt. Nasib Kaur. It was also denied that the plaintiffs set up industrial

unit over a part of the suit land or that Smt. Nasib Kaur or defendant No.1 had ever admitted the plaintiffs to be the owners in possession of the suit property. By way of counter claim, it was pleaded that the plaintiffs be restrained from dispossessing the defendants and in case, the plaintiffs succeed in dispossessing the defendants from the suit land, a decree for mandatory injunction be passed in favour of the defendants.

After hearing both sides and perusing the record, the trial Court dismissed the suit of the plaintiffs, holding that the plaintiffs were trespassers on the suit land and had no right, title or interest in the suit land and if the Flour Mill belongs to the plaintiffs, the plaintiffs were at liberty to remove the same alongwith the machinery from the suit land. It was further held that Smt. Nasib Kaur was owner in possession of the suit land and after death, defendant No.1 had become the owner thereof and she had sold a part of the suit land to defendants No. 5 and 6 and thus, defendants No. 1,5 and 6 were co-owners in possession of the suit land. Resultantly, the suit was dismissed and the counter claim of defendants No.1,5 and 6 was decreed and the plaintiffs were allowed to remove the machinery i.e. Flour Mill from the suit land at their own risk and costs. Aggrieved against the same, two appeals were filed, one by the plaintiffs and the other by the defendants. The learned Additional District Judge after hearing both sides and perusing the record, dismissed the appeal filed by the plaintiffs and a decree for permanent injunction was passed restraining the plaintiffs from causing interference in the possession of the defendants over the suit land along with a decree for possession of the land measuring 10 Biswas after removal of the Flour Mill. Resultantly, the appeal filed by the defendants was also dismissed. Aggrieved against

the same, the plaintiffs filed the present Regular Second Appeal in this Court.

After hearing the learned counsel and perusing the record, in my opinion, there is no merit in this appeal and the same is liable to be dismissed. So far as the suit of the plaintiffs claiming their ownership over the suit land is concerned, as referred to above, it is the case of the plaintiffs themselves that the suit property was purchased by the plaintiffs in the name of Smt. Nasib Kaur, meaning thereby that according to the plaintiffs, the plaintiffs were real owners of the suit property, whereas Smt. Nasib Kaur was the Benami owner of the suit property. However, in my opinion, this plea taken by the plaintiffs is not available to the plaintiffs in view of the provisions of Section 4 of the Benami Transactions (Prohibition) Act, 1988 (hereinafter to be referred as the Act), considering that the present suit was filed by the plaintiffs on 30.3.2000 i.e. much after coming into force of the aforesaid Act. As per the provisions of Section 4(1) of the Act, no suit etc. to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person, shall lie by or on behalf of a person claiming to be the real owner of such property. In **R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs., AIR 1996 Supreme Court 238**, after considering the provisions of Section 4 of the aforesaid Act, it was held by the Hon'ble Supreme Court that Section 4(1) of the Act cannot be applied to suit etc. to enforce any right in the property held benami against the person in whose name such property is held or any other person, if such proceedings were initiated by or on behalf of a person claiming to be real owner thereof, prior to the coming into force of Section 4(1) of the

aforesaid Act. In view of law laid down by the Hon'ble Supreme Court in the aforesaid authority, in my opinion, the plaintiffs were debarred from filing the present suit and claiming themselves to be the real owners of the suit property even though the property was in the name of defendant No.1. Under these circumstances, in my opinion, the plaintiffs cannot be allowed to urge that the property was held benami in the name of defendant No.1 and/or that the suit property was actually owned by the plaintiffs.

It was then submitted before me by the learned counsel appearing for the plaintiffs – appellants that the plaintiffs – appellants were entitled to retain the property on which the industrial shed was constructed by the plaintiffs. However, I find no force in this submission of the learned counsel for the plaintiffs. It is not the case of the plaintiffs that they had acquired ownership on the portion of the suit property by way of adverse possession or otherwise. It is also not the case of the plaintiffs that it was an irrevocable licence to them and/or that they were allowed to raise construction and as such, defendant No.1 was debarred from revoking the licence to them. In the absence of any such plea taken by the plaintiffs, the plaintiffs cannot be allowed to retain any portion of the suit property, especially when the suit property was found to be owned and possessed by Smt. Nasib Kaur and after her death by Smt. Rajinder Kaur and by virtue of the sale in favour of defendants No. 5 and 6 in respect of a portion of the suit property owned and possessed by defendants No. 1,5 and 6. So far as the plaintiffs – appellants are concerned, they have no share in the suit property nor they have any right to retain any part of the suit property with them merely on the plea that they have constructed industrial shed on a part of the suit land. In

my opinion, the Courts below had rightly dismissed the suit of the plaintiffs and had rightly decreed the counter claim filed by the defendants and no fault could be found with the same.

In view of the detailed discussion above, in my opinion, there is no merit in this appeal, especially when no question of law, much less a substantial question of law, arises for determination in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

CMP No. 1132 of 2005:

In view of the dismissal of the main appeal, this application has become infructuous.

(V.M. Jain),
Judge

December 28, 2005
(BSS)